



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0648]**

**RIN 1625-AA11**

### **Regulated Navigation Area; Savannah River, GA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

---

**SUMMARY:** The Coast Guard is amending an existing regulated navigation area (RNA) on the Savannah River located between Fort Jackson, GA and the Savannah River Channel Entrance Sea Buoy. This rule removes inapplicable and/or outdated definitions, processes and requirements in the RNA following a change in capability, infrastructure and layout of the Southern Liquefied Natural Gas (LNG) facility on the Savannah River.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble go to:

<http://www.regulations.gov> and enter USCG-2018-0648 in the “SEARCH” feature. Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION, CONTACT:** If you have questions on this rule, call or email LT Joseph Palmquist, Coast Guard; telephone 912-652-4353 ext. 221, e-mail [joseph.b.palmquist@uscg.mil](mailto:joseph.b.palmquist@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
RNA	Regulated Navigation Area
DHS	Department of Homeland Security
GT	Gross Tons
LNG	Liquefied Natural Gas
FR	Federal Register
GA	Georgia
FiFi	Fire Fighting
NPRM	Notice of proposed rulemaking
BNM	Broadcast Notice to Mariners
§	Section
U.S.C.	United States Code
OMB	Office of Management and Budget

### **II. Background Information and Regulatory History**

A notice of proposed rulemaking (NPRM) entitled “Revision for Regulated Navigation Area; Savannah GA” was published in the **Federal Register** on June 13, 2019 (84 FR 25506). The NPRM proposed to amend the regulated navigation area (RNA) on the Savannah River located between Fort Jackson, GA (32°04.93 N, 081°02.19 W) and the Savannah River Channel Entrance Sea Buoy in 33 CFR 165.756. The NPRM proposed to remove inapplicable and/or outdated definitions, processes and requirements in the RNA following a change in capability, infrastructure and layout of the Southern Liquefied Natural Gas (LNG) facility on the Savannah River. The NPRM provided for a 60-day comment period, which closed on August 12, 2019. We received three comments on the NPRM that are addressed below.

### **III. Legal Authority and Need for the Rule**

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. Through the NPRM and commenting period, the Coast Guard has determined that the RNA needs to be amended to remove inapplicable and/or outdated definitions, processes, and requirements due to

changes in capability, infrastructure, and layout of the Southern LNG facility on the Savannah River.

#### **IV. Discussion of Comments and Changes to the Rule**

##### *A. Discussion of Comments*

The Coast Guard received three comment submissions from the public in response to the proposed rule. Two of the comments proposed additional amendments and/or changes. One comment agreed to the Coast Guard's proposed amendments to the RNA. The comments that proposed additional amendments were from companies and/or parties directly involved or impacted by the RNA, and the final comment received was from a private citizen. All three comments received are discussed below.

The first comment agreed with the proposed changes; however, it proposed further sections of the existing RNA, originally published on September 10, 2007, be amended. The commenter proposed removal of three paragraphs from the original RNA in § 165.756: (d)(1)(iii)(D), (d)(3)(i), and (d)(3)(ii). This recommendation is due to the possibility of smaller vessels calling to port at the Southern LNG Facility in the future. The commenter's first preference is to remove these paragraphs, but in the alternative, proposed to amend the three paragraphs to apply only to LNG Tankships with cargo capacity of over 120,000 m<sup>3</sup>. In alignment with the purpose of this rule- to adapt the RNA to the facility changes- the Coast Guard agrees that stating which requirements apply only to large LNG Tankships will provide additional clarity to the applicability of these requirements. This final rule further amends existing § 165.756(d)(1)(iii)(D), (d)(3)(i), and (d)(3)(ii) (redesignated by this rule as §§ 165.756(d)(1)(iii)(D), (d)(2)(i), and (d)(2)(ii), respectively) by adding a statement that the

requirements of those paragraphs only apply to LNG Tankerships with cargo capacity of over 120,000 m<sup>3</sup>.

The second commenter expressed concern with removing paragraph (d)(5) of § 165.756 as proposed in the NPRM due to potential safety concerns. The commenter stated that, “By removing the Docking Pilot as a watch stander on the bridge of an LNG Tankship, one of the layers of safety is being eliminated.” While the Coast Guard agrees that having a docking pilot onboard each moored vessel could have a positive impact on the emergency response to a potential incident, this is not a standard practice among other LNG facilities, nor is this a requirement for other deep draft vessels moored throughout the Port of Savannah. In addition, it is a standard practice for the vessel to maintain a bridge watchstander while moored. No LNG vessels moor outside of the slip at Southern LNG at Elba Island due to the changes in the facility layout. Therefore, the passing arrangements and communications this watchstander facilitated are no longer necessary. For these reasons, we believe the requirement in paragraph (d)(5) to have an additional watchstander on the bridge, such as a docking pilot, is an unnecessary burden and are removing this requirement with this final rule. LNG tankship vessels mooring in this RNA can still utilize a bridge watch or docking pilot, if desired.

The third and final comment stated that all of the proposed changes in the NPRM are reasonable. The commenter agreed with the revision of § 165.756 due to changes in the facility layout and types of vessels hailing to the facility. The commenter opined that the input from the public meeting and comments received on the NPRM further supports that changes to this RNA are necessary to ensure the safety of operations and to appropriately reflect on the changes to the facility’s layout.

Additionally, since the publication of the proposed rule, paragraph (f) of § 165.756 was deleted by a separate final rule titled “Navigation and Navigable Waters, and Shipping; Technical, Organizational, and Conforming Amendments for U.S. Coast Guard Field Districts 5, 8, 9, 11, 13, 14, and 17” (85 FR 8169, Feb. 13, 2020) noting that it is an outdated penalty provision.

### *B. Discussion of Changes*

This rule contains three types of changes in the regulatory text from the regulatory text proposed in the NPRM. First, based on the comments received from the NPRM, the Coast Guard will amend §165.756 paragraphs (d)(1)(iii)(D), (d)(3)(i), and (d)(3)(ii) to clarify the requirements therein are only applicable to LNG Tankships with a cargo capacity of over 120,000 m<sup>3</sup>.

Secondly, additional verbiage concerning communications, previously required in paragraph (d)(6)(ii) of this section, will be moved into the newly added paragraph (d)(3). The additional language will require vessels 1,600 gross tons or greater to make a broadcast on channel 13 at Buoys “33” and “53” to ensure awareness of vessel location amongst pilots, tugs, and any other inbound and outbound vessels. Additionally, this paragraph will state that the Coast Guard will issue a Broadcast Notice to Mariners (BNM) on channel 16 to ensure public awareness of RNA enforcement. The communication methods added in paragraph (d)(3) will help ensure safe navigation and situational awareness.

Third, since publication of the NPRM, the existing paragraph (f) concerning enforcement was eliminated from § 165.756.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss the First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This proposed amendment and revision has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the RNA. Vessel traffic will be able to safely transit through the RNA with only the few restrictions mentioned in the rule. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the RNA, and there will be communication and coordination with the River Pilots, tugs, and the facility. Furthermore, the RNA has been in place since 2007, and the Coast Guard has only made minor revision to the rule to update the RNA.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is

consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an RNA lasting a minimum amount of time on the Savannah

River when a LNG tankship in excess of heel is transiting the area or moored at the LNG facility. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.756 by:

- a. In paragraph (b), removing the definitions for “Fire Wire”, “Made-up”, and “Make-up”;
- b. Revising paragraphs (d)(1)(iii)(D), (d)(2) and (3); and
- c. Removing paragraphs (d)(4), (d)(5) and (d)(6).

The revisions read as follows:

**§165.756 Regulated Navigation Area; Savannah River, Georgia.**

\*\*\*\*\*

(d) \*\*\*

(1) \*\*\*

(iii) \*\*\*

(D) While transiting the RNA, LNG Tankships of cargo capacity over 120,000 m<sup>3</sup>, carrying LNG in excess of heel, shall have a minimum of two escort towing vessels with a minimum of 100,000 pounds of bollard pull, 4,000 horsepower, and capable of safely operating in the indirect mode. At least one of the towing vessels shall be FiFi Class 1 equipped.

(2) *Requirements while LNG tankships are moored inside the LNG facility slip.* (i) An LNG Tankship of cargo capacity over 120,000 m<sup>3</sup>, moored inside the LNG facility slip shall have two standby towing vessels with a minimum capacity of 100,000 pounds of bollard pull, 4,000 horsepower, and the ability to operate safely in the indirect mode. At least one of the towing vessels shall be FiFi Class 1 equipped. The standby towing vessels shall take appropriate action in an emergency.

(ii) If two LNG tankships of cargo capacity over 120,000 m<sup>3</sup> are moored inside the LNG facility slip, each vessel shall provide a standby towing vessel that is FiFi Class 1 equipped with a minimum capacity of 100,000 pounds of bollard pull and 4,000 horsepower that is available to assist.

(3) *Requirements for other vessels while within the RNA.* (i) Vessels 1,600 gross tons or greater shall at a minimum, transit at bare steerageway when within an area 1,000 yards on either side of

the LNG facility slip to minimize potential wake or surge damage to the LNG facility and vessel(s) within the slip.

(ii) Vessels 1,600 gross tons or greater shall make a broadcast on channel 13 at the following points on the Savannah River:

(A) Buoy “33” in the vicinity of Fields Cut for inbound vessels;

(B) Buoy “53” in the vicinity of Fort Jackson for outbound vessels.

(iii) Vessels 1,600 gross tons or greater shall not meet nor overtake within the area adjacent to either side of the LNG facility slip when an LNG tankship is present within the slip.

(iv) Except for vessels involved in those operations noted in paragraph (c) of this section entitled Applicability, no vessel shall enter the LNG facility slip at any time without the permission of the Captain of the Port. The Coast Guard will issue a Broadcast Notice to Mariners on channel 16 upon enforcement of this RNA.

\*\*\*\*\*

Dated: March 27, 2020

E. C. Jones,

Rear Admiral, U.S. Coast Guard,

Commander, Seventh Coast Guard District

[FR Doc. 2020-06894 Filed: 4/13/2020 8:45 am; Publication Date: 4/14/2020]